

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
YOUNG BROTHERS, LIMITED)
For Approval of Tariff Change to)
Eliminate Less Than Container Load)
Service to and from Kahului Harbor)
on the Island of Maui.)
Transmittal No. 06-0001.)
_____)

DOCKET NO. 2006-0120

ORDER NO. 22695

Filed August 7, 2006
At 10 o'clock A.M.

Karen Higashi
Chief Clerk of the Commission

RECEIVED

2006 AUG -8 A 9:09

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi

In the Matter of the Application of)
YOUNG BROTHERS, LIMITED)
For Approval of Tariff Change to)
Eliminate Less Than Container Load)
Service to and from Kahului Harbor)
on the Island of Maui.)
Transmittal No. 06-0001.)

Order No. 22695

By this Order, the commission, on its own motion, amends Sections II and VII of Stipulated Prehearing Order No. 22582, filed on June 29, 2006, to provide that any changes to Stipulated Prehearing Order No. 22582, including the Stipulated Regulatory Schedule, are subject to the commission's approval.¹ The commission also amends page 2, Items No. 14 to No. 17, of the Stipulated Regulatory Schedule, and: (1) sets a deadline date of August 4, 2006, for interested persons to submit written comments to the commission; (2) re-sets the deadline date for Young Brothers to file its Reply Statement of Position to August 4, 2006; (3) schedules a prehearing conference for

¹The Parties are YOUNG BROTHERS, LIMITED ("Young Brothers") and the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate"), an *ex officio* party to this proceeding. See Hawaii Revised Statutes § 269-51; and Hawaii Administrative Rules ("HAR") § 6-61-62(a). The Participants are the HAWAII FARM BUREAU FEDERATION, HAWAII TRANSPORTATION ASSOCIATION, and WESTERN MOTOR TARIFF BUREAU, INC. The Stipulated Regulatory Schedule is attached as Exhibit A to Stipulated Prehearing Order No. 22582.

September 5, 2006, 9:00 a.m., at the commission's conference room; and (4) re-schedules the evidentiary hearing for September 6, 2006, 9:00 a.m., at the commission's hearing room.

I.

Stipulated Prehearing Order No. 22582

Stipulated Prehearing Order No. 22582, filed on June 29, 2006, provides in part that the Parties and Participants shall have the right to amend the Stipulated Regulatory Schedule as may be agreed-upon in writing from time to time,² and that the stipulated prehearing order shall control the course of the proceeding, unless modified by the Parties and Participants in writing or to prevent manifest injustice.³

HAR § 6-61-23 governs commission action for extensions of time requested by a party, whether the request is made prior to or on the deadline date (good cause) or thereafter (excusable neglect).⁴ Stipulated Prehearing Order No. 22582 does not cite

²Stipulated Prehearing Order No. 22582, Section II, Schedule of Proceedings, at 2.

³Stipulated Prehearing Order No. 22582, Section VII, at 7.

⁴HAR § 6-61-23 states:

Enlargement. (a) When by this chapter or by notice or by order of the commission, any act is required or allowed to be done at or within a specified time, the commission for good cause shown may at any time, in its discretion:

- (1) With or without motion or notice, order the period enlarged, if written request is made before the expiration of the period originally prescribed or as extended by a previous order; or
- (2) Upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking

or refer to HAR § 6-61-23, and instead, appears to authorize the Parties and Participants to unilaterally extend deadline dates upon their written agreement. Accordingly, the commission, on its own motion, hereby amends Sections II and VII of Stipulated Prehearing Order No. 22582, as follows:⁵

II.

SCHEDULE OF PROCEEDINGS

Parties and Participants shall adhere to the schedule of proceedings set forth in the Stipulated Regulatory Schedule attached to this Stipulation as Exhibit 'A' (**'Stipulated Regulatory Schedule'**). Notwithstanding the above, the Parties and Participants [shall have the right to] may amend the Stipulated Regulatory Schedule as may be agreed in writing from time to time[.]; provided that the requesting party or participant receives the commission's approval in accordance with HAR § 6-61-23, to the extent applicable.

VII.

GENERAL

The foregoing procedures shall be applied in a manner consistent with the orderly conduct of this proceeding. [Pursuant to HAR § 6-61-37, this] This Stipulation for Prehearing Order shall control the subsequent course of the proceeding, unless modified by the Parties and Participants in writing [or to prevent manifest injustice.] and

any action on jurisdictional matters and where any order expressly provides that no enlargement shall be granted.

(b) Motions for extensions of time and requests or stipulations for continuances must be in writing, except when made at hearing. Ordinarily, when a matter is to be submitted on concurrent briefs, extensions will not be granted unless a stipulation is filed with the commission.

HAR § 6-61-23.

⁵Deletions are bracketed, additions are underscored.

approved by the commission, or upon the commission's own motion.

In addition, the commission, on its own motion, amends page 2, Items No. 14 to No. 17, of the Stipulated Regulatory Schedule, by:⁶ (1) setting a deadline date of August 4, 2006, for interested persons to submit written comments to the commission; (2) re-setting the deadline date for Young Brothers to file its Reply Statement of Position to August 4, 2006;⁷ (3) scheduling a prehearing conference for September 5, 2006, 9:00 a.m., at the commission's conference room; and (4) re-scheduling the evidentiary hearing for September 6, 2006, 9:00 a.m., at the commission's hearing room (465 South King Street, Hearing Room B-3, Honolulu, Hawaii).⁸

⁶Footnotes 7 and 8, as set forth on page 2 of the Stipulated Regulatory Schedule, governing the Parties' rights to engage in settlement discussions and to waive the evidentiary hearing, are retained.

⁷The Parties' simultaneous Statements of Position were initially due on July 14, 2006. See Stipulated Prehearing Order No. 22582, Exhibit A, at 2. However, based on the Parties' and Participants' agreed-upon modifications to the Stipulated Regulatory Schedule, the Consumer Advocate filed its Statement of Position on July 24, 2006, and Young Brothers' Reply Statement of Position is now due by August 4, 2006. See Consumer Advocate's letters, dated July 14 and 17, 2006; commission's letter, dated July 18, 2006; Consumer Advocate's letters, dated July 19 and 20, 2006; Young Brothers' letter, dated July 19, 2006; commission's letter, dated July 21, 2006; and Young Brothers' letter, dated July 28, 2006. On a going-forward basis, effective from the date of this Order, any extensions of time will be subject to the requisite standards under HAR § 6-61-23, to the extent applicable.

⁸The evidentiary hearing, initially scheduled for July 18, 2006, see Notice of Evidentiary Hearing, dated June 23, 2006, was continued until further notice based on the Parties' and Participants' agreements to modify the Stipulated Regulatory Schedule. See commission's letter, dated July 18, 2006.

IV.

Orders

THE COMMISSION ORDERS:

1. Stipulated Prehearing Order No. 22582, filed on June 29, 2006, is amended to provide that any changes to Stipulated Prehearing Order No. 22582, including the Stipulated Regulatory Schedule, are subject to the commission's approval.

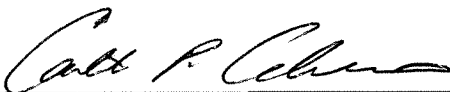
2. Page 2, Items No. 14 to No. 17, of the Stipulated Regulatory Schedule, is amended to now read as follows:*

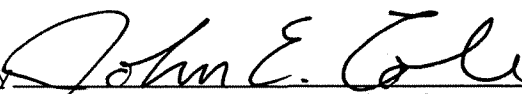
- | | |
|------------------------------------|---|
| 14. July 24, 2006 | Consumer Advocate's Statement of Position ("SOP") due |
| 15. August 4, 2006 | Young Brothers' Reply SOP due |
| | Deadline for interested persons to submit written comments to the commission |
| 16. September 5, 2006
9:00 a.m. | Prehearing conference, at the commission's conference room (465 South King Street, Room 103, Honolulu) |
| 17. September 6, 2006
9:00 a.m. | Evidentiary hearing, at the commission's hearing room (465 South King Street, Hearing Room B-3, Honolulu) |

*Footnotes 7 and 8, as set forth on page 2 of the Stipulated Regulatory Schedule, governing the Parties' rights to engage in settlement discussions and to waive the evidentiary hearing, are retained.


DONE at Honolulu, Hawaii AUG - 7 2006.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

APPROVED AS TO FORM:


Michael Azama
Commission Counsel

2006-0120.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 22695 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

ROY CATALANI
VICE PRESIDENT, STRATEGIC PLANNING
AND GOVERNMENT AFFAIRS
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Counsel for the HAWAII FARM BUREAU FEDERATION



Karen Higashi

DATED: AUG - 7 2006